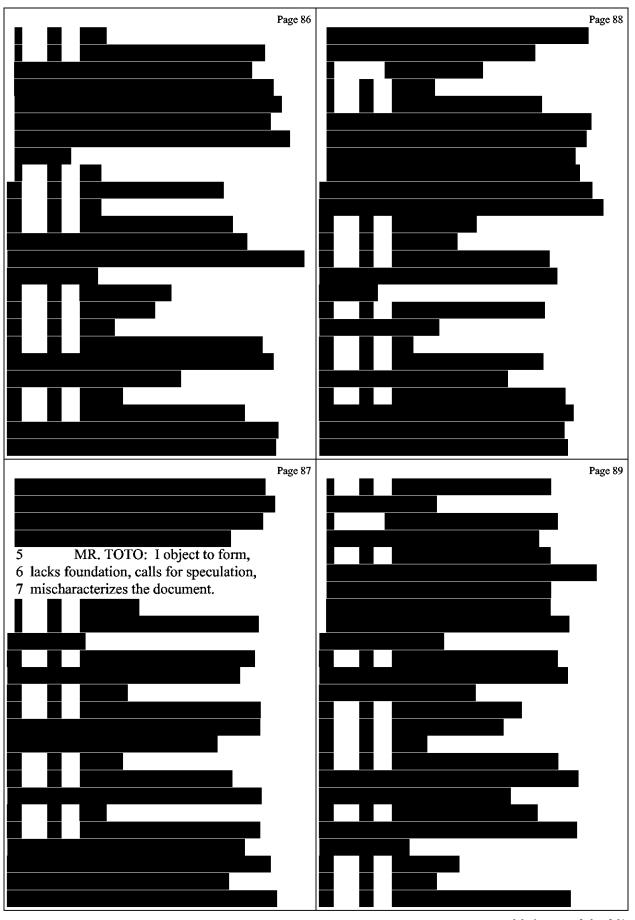
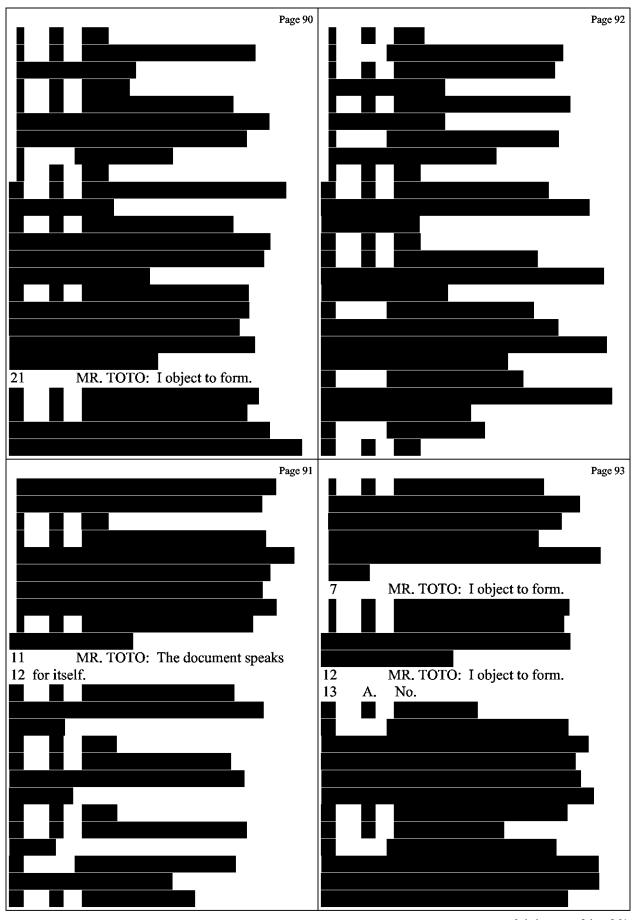
Exhibit 359 (Filed Under Seal)

	Page 1
1	** HIGHLY CONFIDENTIAL **
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	Civil Action No. 1:15-cv-07488-CM
5	x
6	
	IN RE NAMENDA DIRECT PURCHASER
7	ANTITRUST LITIGATION
8	
9	x
	August 29, 2017
10	8:49 a.m.
11	
12	
13	Videotaped Deposition of FOREST
14	LABORATORIES, LLC; ACTAVIS, PLC; FOREST
15	LABORATORIES, INC.; and FOREST LABORATORIES
16	HOLDINGS LTD., by MARK DEVLIN, taken by
17	Plaintiffs, pursuant to Rule 30(b)(6)
18	Notice, held at the offices of Garwin
19	Gerstein & Fisher LLP, 88 Pine Street, New
20	York, New York, before Todd DeSimone, a
21	Registered Professional Reporter and Notary
22	Public of the State of New York.
23	
24	
25	

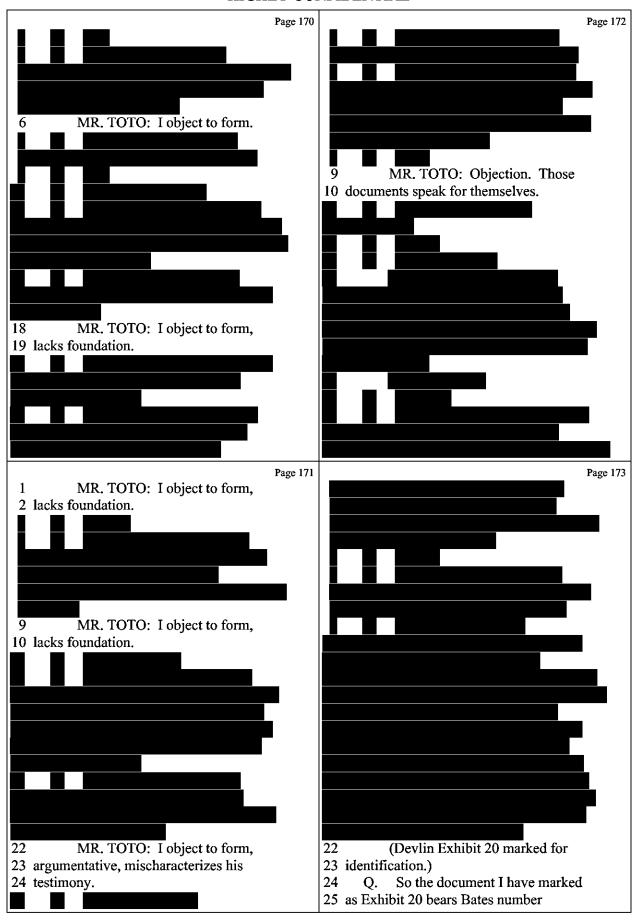


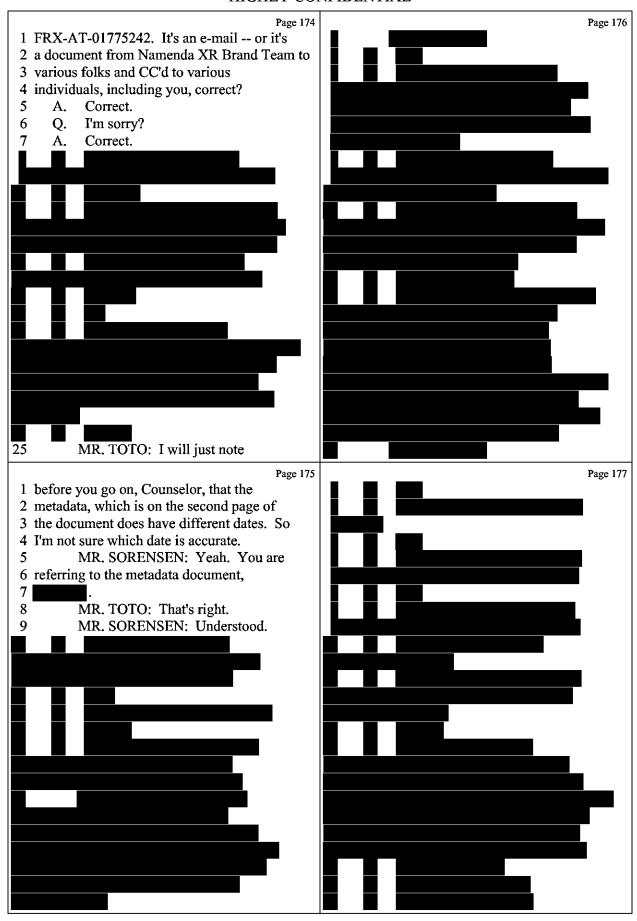
23 (Pages 86 - 89)

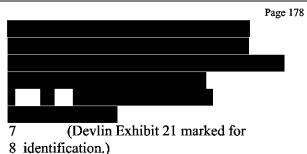


24 (Pages 90 - 93)









9 Q. Sir, I have shown you an

10 exhibit marked Exhibit 21. It has Bates

11 number FRX-AT-01779498.

Do you see that, sir?

13 A. Yes.

14 Q. Have you seen this document

15 before?

16 A. Yes.

17 Q. It bears a Devlin exhibit

18 sticker from your August 21, 2014 New York

19 AG deposition. Do you see that?

20 A. Yes.

21 Q. And what is this document, sir?

A. It's a press release that

23 announces a plan to discontinue sale of

24 Namenda IR.

25 Q. And was, as far as you know,

2 Q. So Forest sent out thousands of 3 such notices; is that correct?

4 A. I don't know the number, but we

Page 180

5 did communicate with others, yes.

6 Q. Any idea the magnitude, 5,000 7 e-mails, 100,000?

8 A. I just know in my area it was 9 probably several hundred.

10 Q. In your area, what was your 11 area, again?

12 A. Insurance companies, health

13 plans, pharmacy benefit management

14 companies.

15 Q. So you contacted all those -- 16 all those companies; is that correct?

17 A. Yes.

18 Q. But other folks dealing with

19 physicians or long-term care facilities or

20 others would be responsible for

21 communicating to their customers or their

22 audience, correct?

23 A. I believe so, yeah.

Q. Did you participate in any

25 meetings where the topic was, you know, the

Page 179

24

rage 1/9

1 this the first press release announcing 2 that plan?

2 that plan?

3 A. As far as I know, yes.

4 Q. So this is February 14th, 2014,

5 correct?

7

A. Correct.

Q. All right. You can put that

8 aside, sir.

9 Now, in connection with the

10 announcement to discontinue IR and move to

11 XR, isn't it correct that Forest also

12 engaged in a fairly extensive information

13 media campaign to contact caregivers,

14 physicians, others, about this

15 announcement?

16 MR. TOTO: You are talking

17 about the February 14th, Exhibit 21, right?

18 MR. SORENSEN: Yes.

19 MR. TOTO: Okay.

20 A. Yes,

e to

Page 181
1 scope or how to communicate this message of
2 withdrawal as widely as possible?

3 A. I remember some discussion

4 about the press release and about notifying

5 customers of what our plan was, but the

6 extent and the numbers of customers that

7 were being contacted, I don't recall

8 specific numbers.

9 Q. Was there a person or persons

10 in charge of that kind of media or

11 information publicity campaign?

12 A. I don't know if it was the

13 brand team responsibility or if it was

14 Corporate Communications' responsibility

15 for that. I don't know.

16 Q. Who was in charge of Corporate

17 Communications at this time?

18 MR. TOTO: Counsel, which

19 30(b)(6) topic is this encompassed within?

20 MR. SORENSEN: I think it is

21 within topic 6, strategy.

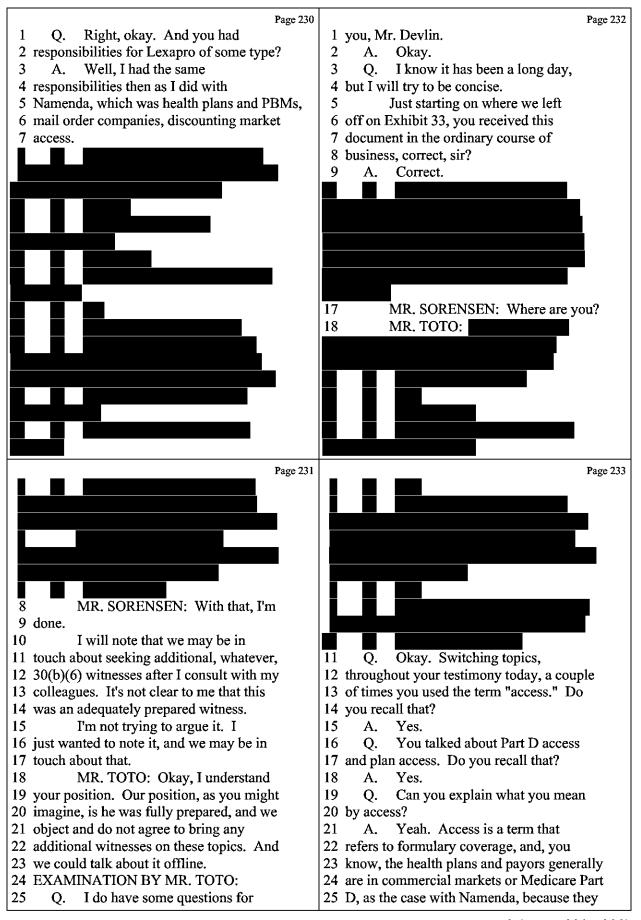
22 MR. TOTO: I don't believe so.

23 I object, beyond the scope.

Q. Go ahead.

A. At the time I believe it might

25



Page 234 Page 236 1 had a large percentage of the business, a 1 plan sponsor, and preferred means that's 2 large majority that is paid for through the 2 the product that they receive the best 3 Medicare Part D program, and there's just a 3 price for, the product that they then 4 small number of approved plan sponsors that 4 charge the lowest out-of-pocket co-pay for 5 we negotiate with for formulary coverage or 5 the patient, or they can have a product 6 that will be nonpreferred brand, which will 6 access to our products. If you don't have that access, 7 have a higher co-pay for the patient. 8 you get literally no business in Medicare. 8 They can put restrictions in 9 And if you have that access, you get a lot 9 place and barriers to physicians 10 of business. So you have to, in order to 10 prescribing one product over another 11 gain that access, you have to negotiate and 11 through generic step requirements at the 12 discount your price, and those companies 12 point of sale, prior authorizations from 13 are very formidable negotiators. That's 13 physicians, or they can choose to simply 14 their sole job, is to negotiate the lowest 14 not cover the product and force the 15 price possible for them and the highest 15 patient, the Medicare patient to pay full 16 discounts or rebates back from the 16 price and reject it. Do plans negotiate for 17 manufacturer. 17 And did you in fact negotiate 18 preferential pricing in the form of 19 discounts in return for preferential 19 with these plans to gain access for Namenda 20 XR? 20 formulary placement? 21 We did. We did. They were --21 A. Yes. A. 22 22 those plans, the access and our success MR. SORENSEN: Same objections. 23 came on over time, and the largest Medicare 23 Go ahead. 24 plan sponsor we were able to gain access in 24 A. Yes, they do. 25 January of 2014, which had a large impact 25 And did you in fact have those Q. Page 235 Page 237 1 on our Namenda XR uptake. 1 negotiations when it came to Namenda XR? 2 And who was that plan? MR. SORENSEN: Same objections. Q. That was United Healthcare 3 I object to this entire line of questions 4 AARP, some may call it Optum, you may see 4 so far. 5 We did. It's part of my 5 it Optum in the spreadsheet, that's the 6 PBM, but it is all owned by United primary job responsibility. 6 7 Healthcare, which has the large majority of 7 (Devlin Exhibit 34 marked for 8 Medicare beneficiaries. 8 identification.) Can you describe how the Sir, you have been handed 10 concept of access is related to formulary 10 Exhibit 34. Do you have that in front of 11 coverage? 11 you? 12 MR. SORENSEN: I will just note 12 A. I do. 13 an objection. This is outside the scope of 13 You are aware, before we get to Q. 14 the 30(b)(6). But go ahead. 14 the specifics of 34, you are aware that --15 MR. TOTO: It is certainly in 15 there was testimony today about a plan that 16 the scope of what you asked him. Go ahead. 16 Forest had in the past to withdraw Namenda MR. SORENSEN: I disagree with 17 IR from the market, right? 18 that, too. I'm not stopping you from 18 A. Correct.

60 (Pages 234 - 237)

And are you aware that there

MR. SORENSEN: Objection,

And were you deposed in that

20 was a lawsuit brought by the New York

21 Attorney General in response to that plan?

19

22

23

25

Q.

A.

Q.

Yes.

24 beyond the scope of the 30(b)(6).

20 ahead.

21

19 testifying, I'm just noting objections. Go

22 as United AARP or Silverscript or Humana

24 formulary, and there can be products on

25 that formulary that are preferred by that

23 that I had testified to maintain a

Yeah, so those companies such

	Indie1 col		·
	Page 238		Page 240
1	case?	1	It says "Attorney General Eric
2	A. I was.	2	T. Schneiderman today announced that his
3	MR. SORENSEN: Same objections.	3	office has resolved the antitrust lawsuit
4	Q. Are you aware of the resolution	4	it brought in September of 2014, which has
5	of that case?	5	successfully prevented pharmaceutical
6	A. Yes, I am.	6	manufacturer Allergan plc (previously named
7	MR. SORENSEN: Same objections.	7	Actavis plc) from forcing Alzheimer's
8	Q. What was the resolution?		patients to switch medications as part of
9	MR. SORENSEN: Same objections.	9	an anti-competitive strategy designed to
10	A. Well, there was a, in the		maintain higher prices."
11	course of the lawsuit, there was a judge	11	Do you see that?
	that approved an injunction that prevented	12	A. I do.
	us from implementing the plan to withdraw	13	Q. And that's a true and correct
	Namenda IR, and then ultimately the court	14	statement, correct?
	ruled in favor of the Attorney General and	15	MR. SORENSEN: Same objections.
	we abandoned that plan. We were not	16	A. Correct.
17		17	Q. And that's a reliable
18	Q. So did the injunction prohibit		statement, correct?
19	you from withdrawing IR from the market?	19	MR. SORENSEN: Same objections.
20	A. Yes.		Beyond the scope.
21		21	A. That's correct.
		22	
	from limiting the distribution of Namenda		Q. It goes on to say "In December
	IR in any way?		of 2014, a federal judge granted New York's
24	A. Yes.		request for an injunction and prohibited
25	MR. SORENSEN: Same objections.	23	Allergan from engaging in the controversial
	Page 239		Page 241
1	Q. Did Forest fully comply		tactic sometimes called a forced switch,
1 2		2	tactic sometimes called a forced switch, which would have needlessly disrupted the
	Q. Did Forest fully comply MR. SORENSEN: Hold on, I'm sorry.	2	tactic sometimes called a forced switch,
2	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you	2	tactic sometimes called a forced switch, which would have needlessly disrupted the
2 3	Q. Did Forest fully comply MR. SORENSEN: Hold on, I'm sorry.	2	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to
2 3 4 5	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you	2 3 4	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits."
2 3 4 5	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is	2 3 4 5	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that?
2 3 4 5 6 7	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6).	2 3 4 5 6 7	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that.
2 3 4 5 6 7	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your	2 3 4 5 6 7 8	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you
2 3 4 5 6 7 8 9	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit	2 3 4 5 6 7 8	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier,
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2 3 4 5 6 7 8 9	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit Forest from limiting the distribution of Namenda IR in any way?	2 3 4 5 6 7 8 9 10	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier, correct? MR. SORENSEN: Same objections. A. Correct.
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2 3 4 5 6 7 8 9 10 11 12	Q. Did Forest fully comply— MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit Forest from limiting the distribution of Namenda IR in any way? MR. SORENSEN: Same objections. A. Yes, the injunction prohibited	2 3 4 5 6 7 8 9 10 11 12	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier, correct? MR. SORENSEN: Same objections. A. Correct.
2 3 4 5 6 7 8 9 10 11 12 13	Q. Did Forest fully comply MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit Forest from limiting the distribution of Namenda IR in any way? MR. SORENSEN: Same objections. A. Yes, the injunction prohibited us from limiting the distribution of IR.	2 3 4 5 6 7 8 9 10 11 12 13	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier, correct? MR. SORENSEN: Same objections. A. Correct. Q. That is a correct and reliable statement; is that right? MR. SORENSEN: Same objections.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Did Forest fully comply— MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit Forest from limiting the distribution of Namenda IR in any way? MR. SORENSEN: Same objections. A. Yes, the injunction prohibited us from limiting the distribution of IR. Q. Now turning to Exhibit 34, do you recognize this to be a press release	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier, correct? MR. SORENSEN: Same objections. A. Correct. Q. That is a correct and reliable statement; is that right? MR. SORENSEN: Same objections. Beyond the scope, hearsay. A. That's correct.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Did Forest fully comply— MR. SORENSEN: Hold on. I'm sorry. I also object insofar as you are asking for legal conclusions and it is all beyond the scope of the 30(b)(6). MR. TOTO: Just state your objections and let's move on. Q. Did the injunction prohibit Forest from limiting the distribution of Namenda IR in any way? MR. SORENSEN: Same objections. A. Yes, the injunction prohibited us from limiting the distribution of IR. Q. Now turning to Exhibit 34, do you recognize this to be a press release from the New York Attorney General's office announcing the resolution of that lawsuit? A. Yes. MR. SORENSEN: If you could please just give me a chance to object. Same objections, and I object to the document as hearsay. But go ahead.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	tactic sometimes called a forced switch, which would have needlessly disrupted the treatment plans of these patients solely to protect corporate profits." Do you see that? A. I see that. Q. And that was the injunction you just referred to a little bit earlier, correct? MR. SORENSEN: Same objections. A. Correct. Q. That is a correct and reliable statement; is that right? MR. SORENSEN: Same objections. Beyond the scope, hearsay. A. That's correct. Q. It goes on to say "Because the injunction protected competition and allowed low-cost generic drugs to enter the market unimpeded, the Attorney General's office has determined that it is no longer necessary to continue legal action." Do you see that?
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Page 244 Page 242 1 statement? 1 patients who wished to remain on IR during MR. SORENSEN: Same objections, 2 early 2015 and then switch to the generic 3 version when it became available over the 3 beyond the scope, calls for hearsay, lack 4 of foundation. Go ahead. 4 summer were able to do so without any A. That's correct. 5 disruption in their medical treatment." Going on, it says "Our lawsuit O. 6 Do you see that? 7 prevented Allergan from pursuing its plan 7 Yes. A. 8 to block competition, thus preserving 8 Was that a true and reliable Q. 9 patient choice for hundreds of thousands of 9 statement? 10 Alzheimer's patients, and protecting the 10 MR. SORENSEN: Same objections, 11 public from bearing hundreds of millions of 11 beyond the scope, lack of foundation, 12 dollars in unnecessary drug costs,' said 12 hearsay. 13 Attorney General Schneiderman." 13 A. Yes. 14 That's what it says, right? 14 Q. I'm only going to read a few 15 15 more sentences. A. Yes. 16 Q. Is that a true and reliable "In addition, Alzheimer's 17 statement? 17 patients who wish to take Namenda XR 18 MR. SORENSEN: Objection, same 18 instead of Namenda IR are also free to do 19 objections, beyond the scope, calls for 19 so." 20 hearsay, lack of foundation. 20 Do you see that? 21 A. Yes. 21 Yes. A. 22 Q. If you turn to the second page 22 Q. Is that a true and reliable 23 of Exhibit 34, and look at the first full 23 statement? 24 paragraph there, it says "As a result of 24 MR. SORENSEN: Same objections. 25 the injunction, Alzheimer's patients have 25 A. Yes. Page 243 Page 245 1 not been forced to switch from Namenda IR And your answers to my 1 2 questions about this document were based on 2 to Namenda XR and instead have been able to 3 select which drug to use based on their and 3 your experience at Forest and your 4 involvement in the lawsuit, correct? 4 their physician's views of which drug is 5 best for them." 5 MR. SORENSEN: Same objections. 6 Do you see that? A. That's correct. 7 7 Yes. Q. You can put that document A. 8 Q. Was that a true and reliable 8 aside. 9 statement? 9 Now, sir, Mr. Sorensen asked 10 you a few questions today, well, a bunch of 10 MR. SORENSEN: Objection, 11 questions, let's say, about forecasts for 11 beyond the scope; objection, hearsay; 12 objection, lack of foundation. 12 the expected conversion from Namenda IR to 13 A. Yes, I believe it to be true 13 XR; do you recall many questions on that? 14 and reliable. 14 A. Yes. 15 It goes on to say "By summer 15 Q. And you also looked at a bunch 16 2015, low-cost generic versions of Namenda 16 of documents that had different numbers on 17 IR became widely available in the market." 17 them when it came to that -- the forecasted Do you see that? 18 18 conversion rate; do you recall that? 19 19 A. Yes. A. Yes. 20 Ο. Was that a true and reliable 21 statement? 22 MR. SORENSEN: Same objections. Yes. 23 A. 24 It continues, "Accordingly, as

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25 a result of the Attorney General's lawsuit,

